HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reserved

Writ Petition No.786 (S/S) 2003

Km. Anisha Dimri D/o Sri J.P. Dimri,
R/o Barish Bhawan,
Ner Hotel Manndhat,
Gopeshwar, Distt. Chamoli. …….Petitioner.

Vs.

1. State of Uttaranchal, through Secretary, Education,
   Govt. of Uttaranchal, Dehradun,
2. Director of Education (Secondary), Uttaranchal,
   Dehradun,
3. Joint Director of Education, Garhwal Region,
   at Pauri, Distt. Pauri Garhwal. ……..Respondents

Sri Pankaj Purohit, leaned counsel for he petitioner,
Learned Standing Counsel for the State.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Pankaj Purohit, leaned counsel for the petitioner and leaned Standing Counsel for the State.

The petitioner, by means of this writ petition, has prayed for a writ of mandamus commanding the respondents to consider the petitioner for appointment on the post of Assistant Teacher L.T. Grade Science/Maths, after considering and awarding quality points on her post graduation degree.

Brief facts of the case are that the petitioner, in pursuance of the advertisement dated 24.06.2002 issued by the respondents, applied for appointment on the post of L.T. Grade Teacher in Science/ Mathematics(women). The petitioner has appeared in M.Sc final examination and at the time of submission of application she was awaiting her result and consequently could not annexed the marks sheet of M.Sc final, alongwith the application. The result of M.Sc final was declared on 10.07.2002 and after obtaining the marks sheet, the same was sent by the petitioner through registered post on

11.07.2002. The marks sheet was sent through registered post from Sri Nagar Garhwal to Joint Director of Education, Pauri, which is at a distance of 30 k.ms. The petitioner has annexed the postal receipt as annexure-2 to the writ petition. the advertisement which was issued by the respondents contained a stipulation that the candidates whose final examination is completed before the date of advertisement which was issued on 24th June 2002 and who are awaiting for their results, may apply and such candidates shall submit their marks sheet of the final examination within three days from the date of declaration of their results.

The contention of the petitioners is that, according to the procedure adopted by the respondents as per rule for awarding the quality points, the total points which the petitioner must get accordingly to her qualification comes 79.19, in case the quality points are also awarded for the degree of M.Sc However, in month of June 2003, the respondents issued appointment letter on the post of Assistant Teacher L.T. Grade Science/Maths to the candidates having less quality points than the petitioner.

The petitioner enquired from the respondents as to why she was not given appointment in spite of the fact that she must get 79.19 quality pointes marks as per procedure adopted for counting the quality points marks. The petitioner was informed that her post graduation degree was not considered for giving quality point marks and, as such, the quality points awarded to her become 69.19, which deprived her for appointment on the post of Assistant Teacher L.T. Grade in Science/Maths.

On August 8, 2003, this Court has passed the following order :-

"Learned Chief Standing Counsel has accepted notices on behalf of respondents. He prays for and is granted three weeks time to file counter affidavit.

The learned counsel for the petitioner has submitted that in pursuance to the advertisement dated 24.06.2002, the petitioner has applied for appointment for the post of L.T. Grade Teacher in Science/mathematic subjects. For M.Sc. final examination the petitioner has appeared prior to the

issuance of the advertisement. However, the result was declared on 10.07.2002 and she has submitted marks sheet o 11.07.2002 through registered post. The last date of submission of application was 18.07.2002. The case of the petitioner is on better footing. The result was declared prior to the submission of the application by the petitioner and she has sent marks sheet by registered post 4 days prior to the last date fixed by he department. The apprehension of the petitioner is that her candidature was not considered. Learned Standing Counsel in the counter affidavit will explain whether the candidature of the petitioner was considered or not and in case her candidature was considered whether the marks sheet of M.Sc. final examination was included or not.

List after three weeks."

A counter affidavit has been filed by the respondents.

In para-8 of the writ petition, the petitioner has categorically stated that the result of M.Sc. final examination was declared on 10.07.2002, and she has sent the marks sheet to the respondents on 11.07.2002, after obtaining the same from the University. The advertisement contained the stipulation that the candidates whose examination has already been over prior to the date of advertisement and the result is awaited, they may sent their marks sheet within three days from the date of declaration of the result. It is not disputed in the counter affidavit that the result was not declared on 10.07.2002; it is also not disputed that the petitioner has not sent the marks sheet within three days from the date of declaration of result. The last date of submission of application, as per the advertisement, was 15.07.2002.

In reply to the para-8 of the writ petition, the respondents have submitted that the contents of para-8 of the writ petition pertains to the result of M.Sc. final examination of the petitioner which is matter of record hence need no comments. The only submission made by the respondents in para-7 of the counter affidavit is that if the petitioner has submitted her Post Graduation marks-sheet within time before the respondent no. 3 than it is possible to the respondents to consider the case of the petitioner, but petitioner did not submit her marks

sheet in time hence, she was not considered for appointment on the post of Assistant Teacher L.T. Grade.

The respondents have not submitted anywhere that when they have received the marks sheet of the petitioner. It is not disputed that the last date of submission of application, as per the advertisement, was 15.07.2002. It is also not disputed that there was a clause in the advertisement to the effect that those candidates who have appeared in the final examination prior to the advertisement and the result of whom is awaited, they may apply and they may submit the marks sheet within three days after the declaration of the result. It is not the case of the respondents that he examinations were not completed prior to the advertisement. It is also not the case of the respondents that the result was not declared on 10.07.2002. Annexure-2 is the postal receipt, which reveals that the petitioner sent her marks sheet on 11th July 2002 to the respondents. The registry to that effect was sent from Sri Nagar, district Pauri Garhwal to Joint Director of Education, Pauri, which is at a distance of 30 K.ms. The respondents nowhere in the counter affidavit have submitted that on which date they have received the marks sheet of the petitioner for M.Sc. final examination. A vague answer has been given to the effect that if the petitioner has submitted her post graduation marks sheet within time then if might be possible to the respondents to consider the same.

The petitioner has specifically submitted that she has submitted her post graduate marks sheet within time to the respondents no. 3 through registered post, but due to negligence on the part of the office of respondent no.3 it was not attached with the application from and, as such, quality point marks could not be given to the petitioner for her post graduation degree. The petitioner should not suffer because of mistake of the respondents. The petitioner has submitted the marks sheet within time from the date of declaration of the result and it can be safely presumed that the marks sheet should have reached to the officer of the respondent on or before the last date of submission of the application, which was 15.07.2002. The

allegation made in the writ petition have not been denied by the respondents in its counter affidavit.

In view of the aforesaid reasons, the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed. The respondents are directed to consider the post graduated degree of he petitioner for awarding quality point marks and after awarding the same if the Petitioner achieves the merit her candidature shall e considered for giving appointment on the post of Assistant Teacher L.T. Grade Science/Maths in accordance with law.

With these direction, the writ petition is disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

September 9, 2004:
NCM: